

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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FRANK BRETT,

Plaintiff,

v.

UNITED STATES MARSHAL  
MR. TULLY,

Defendant.

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Civil Action No. 15-4197 (MAS) (DEA)

**MEMORANDUM ORDER ON  
APPLICATION TO PROCEED  
WITHOUT PREPAYMENT OF FEES**

This matter comes before the Court on the application of Plaintiff Frank Brett to proceed without prepayment of fees under 28 U.S.C. § 1915. (Application, ECF No. 1-2.) The Court will grant the application on the strength of Plaintiff's allegation of indigence but dismiss the Complaint (ECF No. 1) because it fails to state a claim upon which relief may be granted. *See* 28 U.S.C. §1915(e)(2)(B)(ii).

Plaintiff asserts two claims: (1) a claim under *Bivens v. Six Unknown Federal Narcotics Agents*, or an implied private action for damages against federal officers who have allegedly violated a citizen's constitutional rights, 403 U.S. 388 (1971), and (2) a claim under 42 U.S.C. § 1983. Plaintiff brings suit against a U.S. Marshal. Plaintiff requests \$1 million in damages.

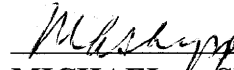
In order to state a valid *Bivens* claim, a plaintiff must "allege the violation of a clearly established constitutional right." *Siegert v. Gilley*, 500 U.S. 226, 231 (1991). Reading the allegations of the Complaint liberally, Plaintiff has not specified a cognizable constitutional right in connection with his *Bivens* claim. Plaintiff asserts Defendant harassed him and called him names. In asserting a *Bivens* action, a plaintiff "must plead sufficient factual matter" in support of a claim of a violation of constitutional right. *See Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009).

As noted, Plaintiff also asserts a § 1983 claim. Section 1983 does not provide a right of action against federal officers. *See Wheedlin v. Wheeler*, 373 U.S. 647, 650 & n.2 (1963). Accordingly, Plaintiff's § 1983 claim also fails.

Accordingly,

**IT IS**, on this 29<sup>th</sup> day of June 2015, **ORDERED** that:

- 1) Plaintiff's application to proceed *in forma pauperis* is hereby granted pursuant to 28 U.S.C. § 1915;
- 2) The Clerk of the Court shall file the Complaint without prepayment of fees or security;
- 3) The Complaint is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim; and
- 4) The Clerk of the Court shall mark this matter CLOSED.

  
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**MICHAEL A. SHIPP**  
**UNITED STATES DISTRICT JUDGE**